***Via* electronic mail at rule-comments@sec.gov**

September 17, 2013

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 9408 [File No. S7-03-13], 78 FEDERAL REGISTER 36,834 (June 19, 2013) (the "Proposing Release")

Dear Ms. Murphy:

The Financial Services Roundtable[1] ("FSR") welcomes the opportunity to provide the Securities and Exchange Commission (the "Commission") with comments on its proposal (the "Proposal") to modify the regulatory framework applicable to money market mutual funds ("MMMFs" or "funds"). The Commission has proposed requiring certain MMMFs either to establish a floating net asset value ("NAV") ("Alternative 1") or to impose a stand-by liquidity fee or gate if a fund's liquidity levels fall below an

[1] The Financial Services Roundtable represents 100 integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for $98.4 trillion in managed assets, $1.1 trillion in revenue, and 2.4 million jobs.

established threshold ("Alternative 2"). In the Proposal, the Commission suggests that it may adopt either or some combination of the two alternatives. The Proposal also contemplates implementing a number of other changes to the regulatory framework applicable to MMMFs, including additional diversification, disclosure, and reporting requirements.[2]

FSR shares the Commission's goal of making MMMFs more resilient and able to withstand potential future financial crises, and FSR is firmly committed to working with the Commission on MMMF reform. FSR believes, however, that any reform must be guided by three key principles:

> First, reform must not harm the fundamental attractiveness of MMMFs to individual, institutional, and other investors who seek principal-preservation and high quality, low-risk investments. Reform also must not eliminate a viable, cost-effective financing mechanism for state and local governments, companies, pension plans, hospitals, and universities. The "reformed" MMMF must continue to offer individual investors, as well as treasurers of companies and state and local governmental entities, a flexible and convenient way to manage their daily cash needs.
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> Second, reform must not introduce opacities, complexities, and costs to MMMFs that burden funds, confuse investors, and may drive capital away from MMMFs to alternative products that are less well regulated and less transparent than MMMFs.
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> Third, reform must address the accounting, tax, and operational issues attendant in changing the regulatory structure applicable to MMMFs. Failure to consider and address these issues could well leave both MMMF sponsors and investors uncertain as to the implications and viability of the MMMF as an investment or cash management tool.

FSR appreciates the significant work of the Commission and its Staff in developing the Proposal. FSR supports many of the Commission's proposed reforms and agrees, in particular, with the Commission's decision not to pursue some of the alternative reforms suggested by the Financial Stability Oversight Council[3] and the

[2] Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 9408 [File No. S7-03-13], 78 FEDERAL REGISTER 36,834 (June 19, 2013), *available at* http://www.gpo.gov/fdsys/pkg/FR-2013-06-19/pdf/2013-13687.pdf.

[3] FINANCIAL STABILITY OVERSIGHT COUNCIL, "Proposed Recommendations Regarding Money Market Mutual Fund Reform, [Docket Number: FSOC-2012-0003], 77 FEDERAL REGISTER 69,455 (Nov. 19, 2012), *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-11-19/pdf/2012-28041.pdf.

President's Working Group.[4] We believe, however, that certain elements of the Proposal are inconsistent with the three key principles FSR believes should animate and inform any reform of MMMFs.

I. <u>Executive Summary</u>

Since the 2008 financial crisis, the reform of MMMFs has been the subject of a vigorous public policy discussion by academicians and other members of the public, governmental and regulatory authorities, and the financial services industry. FSR has engaged in the debate and believes that effective, targeted reforms should be adopted in the MMMF industry.[5] FSR supports the Commission's goal of lowering the perceived systemic risk of MMMFs to the financial system.

Our members have diverse viewpoints on various reform initiatives, including those set forth in the Proposal. Our members' viewpoints mirror the varied positions of those engaged in the public policy debate surrounding MMMF reforms and the antecedents to the Proposal. We understand that many of our members will file comment letters reflecting their unique perspectives on the Proposal.

FSR's members, nevertheless, agree that aspects of the Proposal may be significantly improved through additional clarification or modification, as discussed below.

- <u>First</u>, FSR respectfully submits that the Commission's efforts to bolster financial stability may adversely affect certain investors and market participants that rely on financing from MMMFs. For example, FSR members that generally support Alternative 2 are concerned that gates may render MMMFs unsuitable for Employee Retirement Income Security Act ("<u>ERISA</u>") plans if sponsors were not permitted to redeem shares while a gate is "down."

  FSR urges the Commission to revise certain elements of Alternative 1 and Alternative 2 to make them effective and workable as described in our letter. We believe these modifications would retain the Proposal's fundamental principles while avoiding adverse effects on investors and market participants. These modifications also would retain MMMFs' viability as a cost-effective financing

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[4] PRESIDENT'S WORKING GROUP, "Report on Financial Markets Report on Money Market Fund Reform Options" (Oct. 21, 2010), *available at* http://www.sec.gov/rules/other/2010/ic-29497.pdf, and comments thereto, *available at* http://www.sec.gov/comments/4-619/4-619.shtml.

[5] *See* Comment Letter of the Financial Services Roundtable on the President's Working Group Report on Money Market Fund Reform (Feb. 11, 2011), *available at* http://www.fsround.org/fsr/policy_issues/regulatory/pdfs/pdfs11/FINALFSRLetteronPWGMMF.pdf.

mechanism for state and local governments, companies, pension plans, hospitals and other not-for-profit institutions, as well as MMMFs' effectiveness and attractiveness as a cash management tool—the first of the guiding principles FSR believes must animate any reform effort.

- Second, FSR respectfully submits that if Alternative 1 were adopted, the Commission should redefine the confines of the "retail MMMF" exemption such that the term is not defined by reference to a daily redemption threshold. Additionally, if Alternative 2 were adopted, we believe the Commission should provide an exemption for retail MMMFs in the same form as we request with respect to Alternative 1. We therefore request (a) a redefined exemption for "retail MMMFs" and (b) comprehensive relief for retail MMMFs in both Alternative 1 and Alternative 2. These modifications, as described in our letter, would ensure high-net-worth and other individual investors are not forced out of MMMFs altogether. Importantly, these modifications, in line with the first of our guiding principles, would ensure retail investors need not bear the burden associated with mitigating the risk perceived to be presented by institutional investors.

- Third, FSR respectfully submits that the Commission, if it adopts either alternative set forth in the Proposal, should provide an express exemption for municipal securities (or tax-exempt) MMMFs ("Municipal Funds"). In response to the Commission's question, we do not believe that *all* Municipal Funds would fit within the retail MMMF exemption, no matter how retail MMMF is defined for purposes of the exemption. Additionally, Municipal Funds are neither vulnerable to the perceived run risks associated with institutional prime MMMFs nor are they a source of potential financial contagion. We therefore request express relief for Municipal Funds from the new regulatory régime if the Commission ultimately adopts either of the alternatives it has proposed. Providing an exemption to Municipal Funds also would be in accord with the first of our guiding principles.

- Fourth, FSR respectfully submits that if the retail MMMF exemption were to be adopted with a redemption threshold (which we do not support), the Commission should provide exemptions from the daily redemption threshold for investors providing advance notice of redemptions. Providing this exemption would ensure that individual investors maintain access to cash for predictable outflows, such as buying a home, and would additionally be in accord with the first and second of our guiding principles.

- Fifth, FSR respectfully submits that if Alternative 2 were to be adopted, the Commission should modify the final rule to provide that (a) the default rule is "no fee" and the fund's board of directors must exercise its business judgment as to

whether to impose either a liquidity fee or gate and (b) there is no default liquidity fee, but rather, any such fee would be required to encompass the cost of liquidity to the fund, as determined from time to time by fund managers, administrators, and the boards of directors. These modifications would ensure that MMMFs remain viable cash management tools for investors without imposing unnecessary liquidity fees while also ensuring that the liquidity fee, if and when imposed, is representative of the actual cost of redemptions to the fund. Such modifications would be in line with the second of our guiding principles.

- Sixth, FSR respectfully submits that the Commission did not fully address the operational costs associated with the implementation of Alternative 1. Reliable data suggests that the total up-front costs for institutional investors to modify their business process operations and systems would be in the range of $1.8 to $2 billion. Furthermore, annual operating costs are estimated to be $2 to $2.5 billion dollars.[6]

- Seventh, FSR respectfully submits that certain aspects of Alternative 1 and Alternative 2 require further explication and analysis not only from the Commission but also from other standards-setters (*e.g.*, Financial Accounting Standards Board ("FASB"); Governmental Accounting Standards Board ("GASB"); *etc.*). To this end, we believe the Commission and standards-setters should bear in mind the following if either of the alternatives were adopted.

  In our view, MMMFs should continue to be treated as "cash equivalents" if either of the proposed alternatives were adopted, because none of the proposed alternatives would materially alter the fundamental composition of MMMF portfolios, which are governed by rule 2a-7 under the Investment Company Act of 1940.[7] Similarly, investments in collective funds and other investment companies that generally conform to the requirements of rule 2a-7 should be treated as "cash equivalents" on their owners' balance sheets. Finally, under either alternative, we believe MMMFs should retain their status as eligible securities for securities lending programs and repurchase agreement transactions.

  We urge the Commission to include commentary and interpretative guidance in any final rule release that would provide insight for the wide variety of balance-sheet preparers (companies, pension plans, not-for-profit entities, state and local governments, *etc.*) and their respective auditors concerning the Commission's determination that investments in MMMFs would remain "cash equivalents"

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6 Center for Capital Markets Competitiveness, *Operational Implications of a Floating NAV across Money Market Fund Industry Key Stakeholders* at 4 (Summer 2013).

7 17 C.F.R. § 270.2a-7 ("rule 2a-7").

under a floating NAV régime, and the circumstances under which MMMFs would be treated as "cash equivalents" in those instances when liquidity fees or redemption gates may be implicated. We further urge the Commission and standards-setters to accelerate their respective codification processes, which would ensure that balance-sheet preparers (and their respective auditors) have the appropriate guidance.[8] These changes would be in accord with the third of our guiding principles.

- Eighth, FSR respectfully submits that the most appropriate regulatory response to the potential tax implications associated with Alternative 1 is for the Commission to coordinate an absolute exemption for floating NAV funds from tracking purchase and redemption transactions. Providing an exemption from tracking these transactions would be in line with the second of our guiding principles.

- Finally, FSR respectfully submits that although several members of the Commission voiced support for reform that would combine Alternative 1 and Alternative 2, the Proposal fails to set forth the particulars of how a combined approach would be structured.[9] To this end, many FSR members are concerned about the implications of such an approach. Moreover, in the absence of specific provisions detailing a combination of Alternative 1 and Alternative 2, FSR is unable to offer meaningful comments that might otherwise inform the Commission's judgment and further consideration of any such combination. If such a combined approach were to be pursued, the public must be afforded notice and an opportunity to comment on the workings of the proposed combination.

II. Proposed Reform Alternatives

The Proposal sets forth two primary alternatives for MMMF reform, with a third possibility being some combination of the two alternatives. Each alternative seeks to address the "run" risk associated with institutional investors. Chair Mary Jo White summarizes the Proposal as taking steps to address "the stable value pricing of institutional prime funds—at the heart of the 2008 run—and proposing methods to stop a [MMMF] run before such a run becomes a systemically destabilizing event."[10]

[8] FSR addressed these issues directly with the Commission's Staff and senior FASB Staff in meetings on September 4 and September 6, 2013, respectively.

[9] *See* Chair White, Commissioner Gallagher and Commissioner Walter Statements at the Commission Open Meeting, June 5, 2013, *available at* http://www.sec.gov/divisions/investment/im-moneymarket-statements.shtml.

[10] Chair White Statement at the Commission Open Meeting, June 5, 2013, *available at* http://www.sec.gov/divisions/investment/im-moneymarket-statements.shtml. Indeed, the Commission's Staff observed that investor redemptions "were heaviest in institutional share classes of

Importantly, each alternative would "target the common goal of reducing the incentive to redeem [shares of a MMMF] in times of stress, albeit in different ways."[11] Thus, the Commission's goal is to lower MMMFs' perceived risk of causing systemic crises in the financial system.

A. Alternative 1: Floating NAV.

The Proposal's first alternative would require all institutional prime MMMFs to have a floating—rather than a stable—NAV. The Proposal states that a floating NAV would address the incentive of institutional MMMF shareholders to redeem shares ahead of other investors in times of fund and market stress.[12] Alternative 1 would provide an exemption for government and retail MMMFs.

Some FSR members give credence to the Commission's argument—while reserving significant concerns over the details of the floating NAV alternative—that among the additional regulatory alternatives being considered, a floating NAV confined to institutional prime funds represents a reasonable targeting of reform efforts at the segment of the market that has shown the most proclivity to runs. This alternative also is distinguished by the fact that by cordoning-off individual investors from institutional investors in prime funds, it may protect retail investors from being negatively impacted by the sudden, large movements of institutional investors.

Additionally, these members acknowledge the Commission's point that a floating NAV could mitigate the "first mover" advantage because there would no longer be a "cliff effect" associated with "breaking the buck." Institutional MMMF shareholders would no longer have an opportunity to redeem shares at $1.00 when the MMMF's shares were actually worth less, and remaining shareholders would not have losses concentrated on their holdings.

Furthermore, the same members respect the Commission's claim that daily price fluctuations in MMMFs would likely impact institutional investor expectations and underscore the fact that MMMFs are not risk-free investment vehicles—which could

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prime money market funds, which typically hold securities that are illiquid relative to Government funds." *See* Division of Risk, Strategy, and Financial Innovation, SEC. & EXCH. COMM'N, Response to Questions Posed by Commissioners Aguilar, Paredes, and Gallagher at 10 (Nov. 30, 2012) (the "Staff Study") (noting the possibility that "sophisticated investors took advantage of the opportunity to redeem shares to avoid losses, leaving less sophisticated investors (if co-mingled) to bear the losses").

[11] Chair White Statement at the Commission Open Meeting, June 5, 2013, *available at* http://www.sec.gov/divisions/investment/im-moneymarket-statements.shtml.

[12] Proposing Release at 36,849.

serve to condition institutional investors not to run at the first sign of price instability. Although the incentive to run would not be eliminated by a floating NAV, some of the issues that can contribute to runs would be addressed. All FSR members, however, note that Alternative 1 may result in a significant dislocation of funds from the institutional prime segment and believe Alternative 1 presents several issues that should be clarified or resolved by the Commission, as detailed in the following sections.

Other FSR members, on the other hand, believe that the current formulation of Alternative 1 fails to address certain considerations. First, these members believe there is a practical concern that floating NAVs in combination with real-time information may result in faster shareholder redemptions. Additionally, there is evidence that floating NAV funds and stable-value funds behave similarly in times of economic distress. Therefore, in the view of these members, although Alternative 1 may present a *theoretical* benefit, it is uncertain whether the actual outcome will be as anticipated in the Proposal.

Some FSR members also are concerned that a floating NAV may not move the MMMF industry toward the Commission's goal of reducing the incentive to redeem shares in times of financial stress. In fact, a floating NAV may exacerbate such an incentive. MMMF shareholders generally are risk-averse, and investors who use MMMFs as cash management tools are particularly loss-sensitive. As acknowledged by the Commission, the incentives of investors with low risk tolerance, short-term cash needs, or those operating under investment restrictions "would be expected to persist, even if valuation and pricing incentives were addressed" through the implementation of a floating NAV.[13] Given the speed of redemptions from prime funds in the time after the Reserve Primary Fund "broke the buck," some members note that investors may act *even faster* if information were shared in almost real-time.

The above practical considerations should be considered along with evidence suggesting that floating NAV MMMFs behave no differently than stable-value funds in times of financial stress.[14] The International Organization of Securities Commissions has noted that *all* MMMFs (*i.e.*, both floating and stable-value funds), are subject to the first-mover advantage.[15] Additionally, and supporting the same proposition, HSBC Global

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[13] Proposing Release at 36,842.

[14] *See e.g.,* HSBC Global Asset Management, *Run Risk in Money Market Funds* (November 2011) (the "HSBC Survey").

[15] Technical Committee of the International Organization of Securities Commissions, Money Market Fund Systemic Risk Analysis and Reform Options: Consultation Report at 14 (April 27, 2012) (stating "both [floating and stable-value] funds behave similarly in normal and stressed market environments and . . . may be subject to runs . . . shareholders in a [floating NAV fund] still have an incentive to run due to the limited liquidity in any [MMMF], which creates a higher share price for early redeemers, and thus a first mover advantage."), *available at*

Asset Management conducted a survey tracking six of the largest French floating NAV MMMFs over a ten year period.[16] The HSBC Survey provided two relevant pieces of information. First, it is exceptionally rare for a floating NAV MMMF to post a negative yield. It is therefore rare for a share price to fluctuate and for shareholders to experience and become accustomed to losses or fluctuations in their holdings. Second, of the six funds in the HSBC Survey, the one fund that did post a negative yield suffered significant redemptions in the time thereafter. In effect, the HSBC Survey presents significant evidence that floating NAV MMMFs may not further the Commission's goal of reducing shareholders' incentive to redeem shares in times of financial stress.[17]

Ultra-short U.S. bond funds experienced similar results to those of the French floating NAV MMMFs during the 2008 financial crisis. Ultra-short bond funds are structurally similar to MMMFs, but have floating NAVs. Beginning in 2007 and running through 2008, as the NAV of ultra-short bond funds began to fall, redemptions resulted in the funds losing nearly sixty percent (60%) of their assets.[18] If ultra-short bond funds are unable to withstand fluctuations in share value without significant redemptions, the same may hold true for floating NAV MMMFs.

1. *Tax Implications.*

The Commission recognizes that the change from a stable-value to a floating NAV will have significant tax implications. For example, a floating NAV fund may need to report to shareholders and the Internal Revenue Service (the "Service") certain information about sales of shares, including sale dates and gross proceeds. These reporting requirements would generate significant operational burdens. The Commission notes that the Department of the Treasury ("Treasury") and the Service "are considering" alternatives with respect to tax treatment and tax reporting.

Accordingly, the Service has proposed a procedure that would provide an exemption from the "wash sale" rules for *de minimis* redemptions from floating NAV MMMFs. As proposed, a taxpayer that realizes a loss upon redemption of shares from a

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http://www.iosco.org/library/pubdocs/pdf/IOSCOPD379.pdf; *see also* Staff Study at 8 – 10 (generally providing that *all* mutual funds and not just MMMFs are subject to the "incentive[] to redeem ahead of other investors").

[16] HSBC Survey at 3.

[17] The Investment Company Institute made similar findings. Comment Letter of the Investment Company Institute on the Financial Stability Oversight Council's Proposed Recommendations Regarding Money Market Mutual Fund Reform at 61 (January 24, 2013) (the "ICI Comment Letter"), *available at* http://www.ici.org/pdf/13_fsoc_mmf_recs.pdf.

[18] *Id.* at 59.

floating NAV MMMF that does not exceed one-half of one percent (0.5%) of the taxpayer's basis in the shares would not be subject to the wash sale rules (the "Wash Sale Proposal").[19]

The Wash Sale Proposal fails to minimize the operational burdens associated with a floating NAV. Under the Wash Sales Proposal, investors would be required to monitor MMMF investments to ensure that the losses associated with their investments meet the *de minimis* criterion. Treasury departments at corporate investors (or individual high-net-worth investors, for that matter) are not currently in a position to fully comply with the Wash Sale Proposal, and thus, additional costs would be required to tailor their operational accounting solutions.[20]

Importantly, the Wash Sale Proposal will not generate benefits for the Treasury. Redemption activity in floating NAV MMMFs is more likely to occur when NAVs drop than when they rise. Under the Wash Sale Proposal, such an imbalance in redemption activity would lead to a *negative* inflow in to the Treasury, as investors realize greater losses than gains. In light of these implications, FSR believes the most appropriate regulatory response would be to provide an exemption from the requirement to track purchase and redemption transactions made in floating NAV MMMFs; the operational burdens on investors and funds generated by these new tax obligations would not be justified.

Finally, the Wash Sale Proposal fails to provide certainty to the MMMF industry regarding tax treatment of wash sales. The Wash Sale Proposal recognizes that it was drafted "as if the [Commission] had already adopted final rules addressing floating net asset value in substantially the same form as the proposed rules." It additionally provides: "If [Alternative 1 were] not adopted in substantially the same form as [it has] been proposed, the revenue procedure proposed by this notice may not be adopted or may be adopted in a materially modified form." Such ambivalent statements fail to provide sufficient notice concerning application of tax rules to investments under Alternative 1.

If the Commission determines to adopt Alternative 1 and additionally fails to provide the above requested exemption from tracking purchase and redemption transactions, the industry must be given an opportunity to comment on such alternative *after* the Service provides certainty on the tax implications. In the absence of such opportunity, the industry would lack a meaningful ability to provide its views on potential

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[19] *See* INTERNAL REVENUE SERVICE, "Application of Wash Sale Rules to Money Market Fund Shares," Notice 2013-48 (July 29, 2013), *available at* http://www.irs.gov/irb/2013-31_IRB/ar11.html.

[20] *See generally* Center for Capital Markets Competitiveness, *Operational Implications of a Floating NAV across Money Market Fund Industry Key Stakeholders* at 15 (Summer 2013).

issues. We ask the Commission to provide that the compliance period for Alternative 1 would not begin until 36 months after the Service has provided certainty as to the tax implications of such alternative.

Absent either of these measures, the industry would be required to comment "in the blind" on significant tax implications and would additionally face two separate adjustment phases to Alternative 1 (if it were to be adopted). The two adjustment phases would result from implementing procedures *before* certainty on tax treatment is provided, and then modifying and re-implementing procedures *after* certainty is provided. This absence of certainty as to the tax issues would make conversion to a floating NAV fund impractical. Fund investors and sponsors cannot evaluate Alternative 1 in the absence of a clear understanding of how the tax issues will be resolved.

Recognizing the impracticality and significant drawbacks of applying tax treatment to floating NAV MMMFs, we urge the Commission to coordinate full regulatory relief for MMMF shareholders with the Treasury and the Service.

2. *Accounting and Financial Reporting Implications.*[21]

Neither of the Commission's proposed reform alternatives would materially alter the fundamental composition of MMMF portfolios, which are governed by rule 2a-7. Consequently, irrespective of which alternative reform proposal the Commission determined to adopt, MMMF portfolios would continue to hold the same type of highly-liquid, short-term investments that are readily convertible to cash. Thus, in our view, MMMFs should continue to be treated as "cash equivalents" if the proposed regulatory régime were adopted. As such, MMMFs also should continue to be eligible securities for securities lending programs and for securities repurchase agreements. Similarly, investments in other investment companies, such as collective funds that generally conform to the requirements of rule 2a-7, also should be treated as "cash equivalents" on their owners' balance sheets.

We note that the Commission stated its general belief that

> [A]n investment in a money market fund with a floating NAV would meet the definition of a "cash equivalent." We believe the adoption of [a] floating NAV alone would not preclude shareholders from classifying their investments in money market funds as cash equivalents because fluctuations in the amount of cash received upon redemption would likely

[21] For purposes of providing a cogent discussion of the accounting and financial reporting implications, we have intentionally discussed both Alternative 1 and Alternative 2 in this section.

> be insignificant and would be consistent with the concept of a 'known' amount of cash.[22]

FSR appreciates the Commission's statement in the Proposing Release, and concurs with the Commission's view that "an investment in a money market fund with [a] floating NAV would meet the definition of a 'cash equivalent,'" but—as we discuss below—more is needed to address fully the financial reporting issues under U.S. generally accepted accounting principles ("GAAP") raised by proposed Alternative 1 and Alternative 2.[23]

Under current accounting guidance, many shareholders classify MMMFs as "cash and cash equivalents" on their balance sheets. It is possible that certain proposed changes to rule 2a-7 would potentially change the classification of MMMFs from cash and cash equivalents to short-term investments (or another line item).

FASB Accounting Standards Codification 305-10-20 (the "Codification") defines "Cash Equivalents" as "short-term, highly liquid investments" that are: (1) "[r]eadily convertible to known amounts of cash," and (2) "[s]o near maturity that they present insignificant risk of changes in value because of changes in interest rates." The Codification provides that "[g]enerally, only investments with original maturities of three months or less qualify under that definition." The Codification further provides the following examples of "cash equivalents:" Treasury Bills, commercial paper, MMMFs, and federal funds sold. The GASB utilizes the same definition of cash and cash equivalents.[24]

a. Specific Interpretative Issues.

i. Floating NAV and Liquidity Fees and the "Convertible to Known Amounts of Cash" Criterion.

Based on the Codification, floating a MMMF's NAV would appear to implicate shareholders' ability to treat investments in MMMFs as *cash equivalents*. While a MMMF with a floating NAV would satisfy the requirement that the fund's shares be readily available to be converted to cash, the *exact amount of the proceeds* from the conversion would not be known until settlement of the redemption transaction. Because the NAV of the shares would float on a daily basis, the cash amount would not be exact

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22 Proposing Release at 36,869.

23 *Id.*

24 REPORTING CASH FLOWS OF PROPRIETARY AND NONEXPENDABLE TRUST FUNDS AND GOVERNMENTAL ENTITIES THAT USE PROPRIETARY FUND ACCOUNTING, Statement of Gov. Accounting Standards No. 9 § 9 (Gov. Accounting Standards Bd. 1989).

for purposes of the first criterion of the definition. Would the shares of a floating NAV MMMF no longer meet the test of being convertible to *known* amounts of cash?

An argument could be made that the range in which the MMMF's NAV would fluctuate would be an extremely small band; therefore, the amount could be known with some precision. However, it would depend upon how one defines "known" in order to determine whether MMMF shares with a floating NAV could still meet the criterion and definition set forth in the Codification. Thus, the question to be answered would be (1) whether *known* would be an *exact* amount or (2) whether *known* could be an amount within a tight band of values. FSR does not believe a "bright-line" test focused on a tight band of values would be appropriate. Rather, we believe a principles-based approach would be more appropriate given the particular facts and circumstances that must be considered in the balance-sheet preparer's professional judgment. Thus, FSR believes it would be appropriate to interpret that the amount of cash to be received is *known* unless it is likely that fluctuations in the amount of cash to be received on redemption compared to the current measurement date would be more than insignificant.

Although the imposition of a liquidity fee would reduce the amount an investor would receive if the investor redeemed during a period when the liquidity fee were in effect, we believe the investor generally should treat its MMMF investment as cash equivalents. Because the investor ultimately determines when it will redeem MMMF shares, the investor controls the circumstances under which it would be assessed any liquidity fee. In this scenario, some members believe it would be appropriate to interpret that to the extent a liquidity fee would be imposed upon redemption and the investor expects to pay the fee, an amount equal to the potential fee would not be considered a cash equivalent.

However, if shareholders cannot consider their investments in MMMFs as cash equivalents under the proposed regulatory alternatives, FSR posits that many governmental entities, companies, and other institutional investors would be required to choose between defaulting on debt covenants or refraining from the use of MMMFs in order to maintain good standing with their creditors. FSR believes the public (particularly balance-sheet preparers and their auditors) must be provided with certainty as to accounting and financial reporting treatment, or if certainty is provided after the comment period has closed, the Commission should provide an additional opportunity to comment on the floating NAV alternative.

ii. Redemption Gates and the "Highly Liquid Investments" or "Readily Convertible to Cash" Criteria.

If a MMMF suspended redemptions for a period of time, there is a question as to whether the fund's shareholders could continue to consider their investments in the fund's shares as *cash equivalents*. Would MMMF shares subject to redemption gates no longer meet the test of being "highly liquid investments" or "readily convertible to cash?" As a result, would shareholders need to reclassify their investments in the fund for financial reporting purposes as *short-term investments*? FSR believes it would be appropriate to interpret that MMMFs meet the definition of cash equivalents unless at the measurement date, an investor would be restricted from redeeming for more than a temporary period.

iii. The Commission and Accounting Standards-Setters Should Provide Comprehensive Guidance Promptly.

We note that companies, pension plans, hospitals and other not-for-profit entities, governmental authorities at all levels (federal, state, and local), and other institutional investors generally hold MMMFs "as part of [their] cash management activities, rather than as part of [their] operating, investing, and financing activities."[25] Individuals also rely heavily on MMMFS as a flexible and convenient way to manage their daily cash needs. FSR's Members have noted that many of their individual and institutional clients are very concerned about the impact of both proposed alternatives on their clients' ability to treat investments in MMMFs as cash equivalents.

Moreover, if the Commission were to adopt rules that would impact GAAP in a rulemaking release focused on MMMF regulations, FSR members note the wide variety of balance-sheet preparers (companies, not-for-profits, governmental authorities, and other investors across the U.S.) that use MMMFs to manage their cash positions, *but which are not subject to the Commission's financial reporting requirements*—and the firms that audit them—are likely to be unaware of the rulemaking release.

FSR urges the Commission to include in any final rule release commentary and interpretative guidance that would provide insight for balance-sheet preparers and their respective auditors concerning the Commission's determination that investments in MMMFs would remain "cash equivalents" under a floating NAV régime, and the

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[25] *See, e.g.*, STATEMENT OF CASH FLOWS, Statement of Fin. Accounting Standards No. 9 § 9 (Fin. Accounting Standards Bd. 1987).

circumstances under which MMMFs would be treated as "cash equivalents" in those instances when liquidity fees or redemption gates may be implicated. We also ask the Commission to confirm that MMMFs would retain their status as eligible securities for securities lending programs and repurchase agreement transactions. Finally, we urge the FASB and the GASB to accelerate their respective codification processes to ensure that balance-sheet providers and their respective auditors have the appropriate guidance as promptly as possible after the Commission adopts final rules.

3. *Absence of a Specific Exemption for Municipal Securities MMMFs.*

The Commission does not afford an exemption for Municipal Funds but rather asserts that most of these funds "would likely" be covered by the retail fund exemption.[26] FSR believes that the retail exemption is insufficient because, in the experience of several of our members, these funds may experience redemption requests that exceed $1 million. As a result, Municipal Funds and the investors they benefit may not be able to conform to the Commission's proposed retail MMMF exemption. We believe many investors will avoid Municipal Funds if an exemption were not available, which is an undesirable outcome from a state-funding perspective.

FSR believes that Municipal Funds should be expressly exempt from the floating NAV requirement for the same reasons the Commission has proposed to exempt government MMMFs. Because these funds are primarily invested in assets characterized by low credit risk and high liquidity, they do not present the same risk characteristics and redemption pressures as prime institutional MMMFs. Between 1970 and 2012, the one-year default rate of municipal issuers of rated bonds was 0.012 percent (.012%), and approximately 93 percent (93%) of issuers held investment-grade ratings in 2012, reflecting the low probability of default among municipal issuers.[27] Further strengthening the credit quality of Municipal Funds' portfolios, many of their assets are enhanced with letters of credit from providers with strong credit ratings. These letters of credit insulate Municipal Fund portfolios from rating downgrades and defaults on their assets. Consequently, the assets held by Municipal Funds are deemed highly liquid. As of June 2012, tax-exempt funds held weekly liquidity amounting to 81 percent (81%) of their assets.[28]

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[26] Proposing Release at 36,855.

[27] Moody's Investors Service, *US Municipal Bond Defaults and Recoveries, 1970-2012* at 13 and 18 (May 7, 2013), *available at* https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBM_PBM151936 (*sub. req.*).

[28] ICI Comment Letter at 49.

As a result of holding such high quality assets, Municipal Funds are not susceptible to the redemption pressures faced by prime institutional MMMFs. Empirical analyses of the redemption risks faced by Municipal Funds consistently indicate that these funds are neither susceptible to general runs nor are themselves sources of contagion. The Staff Study, comparing the assets of Municipal Funds from 2007 to mid-2009, finds that Municipal Fund assets remained largely unchanged as of mid-2009.[29]

Likewise, when a Municipal Fund is under stress and experiences significant redemptions, evidence consistently demonstrates that redemption runs do not spread to other Municipal Funds, let alone the wider financial system. For example, as a result of Orange County's default on December 9, 1994, Municipal Funds that held significant positions in securities issued by California municipalities experienced substantial redemptions over the following months; however, tax-exempt funds as a class experienced *net inflows* during this period.[30] During the 2008 financial crisis, even though all of Reserve's tax-exempt funds suspended redemptions and several Lehman-sponsored tax-exempt funds experienced heavy redemptions, other Municipal Funds remained stable and were not affected.[31]

More recently, we note that the bankruptcy filing by the City of Detroit, Michigan, ("Detroit") under Chapter 9 of the Bankruptcy Code did not result in significant shareholder redemptions, market disruption or destabilization for Municipal Funds generally or for Michigan Municipal Funds. Indeed, Detroit has not been an issuer of eligible MMMF assets for purposes of rule 2a-7 for a very long time.

In light of the above data, FSR believes that if the Commission adopts Alternative 1, it must provide an express exemption for Municipal Funds.

4. *Retail MMMF Exemption.*

We commend the Commission for exempting retail MMMFs from Alternative 1, which is critical to retaining the viability of MMMFs as a cash management tool for individual (*i.e.*, non-institutional) investors. However, as detailed below, we believe that the Commission's method of drawing the confines of the exemption should be reconsidered.

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[29] *See* Staff Study at 7.

[30] ICI Comment Letter at 48.

[31] *Id.* at 47.

Defining the retail exemption by focusing on the characteristics of retail MMMFs fails to take into account the broader purpose of the exemption itself: limiting the ability of institutional investors to "run" on the fund. Moreover, by narrowly defining what constitutes a retail MMMF through the use of a redemption limit, the exemption is foreclosed to many of the investors it is meant to benefit. We believe the preferable solution would be to focus the exemption on a definition of either (a) "institutional investor," and providing that retail MMMFs are funds that exclude institutional investors; or (b) "retail MMMF," and defining these funds (i) by reference to the type of securities accounts that are typically classified as retail investors, or (ii) as funds that do not provide the speed of settlement typically provided to institutional investors.

To facilitate the Commission's redrafting of the retail MMMF exemption, we offer the following suggestions. An "institutional investor" could be defined by either of the following methods (or some combination thereof): (a) by reference to the assets under management of the institution, its affiliates and subsidiaries; or (b) by reference to the assets beneficially owned by the institution, its affiliates and subsidiaries. In the alternative, the Commission could define "retail MMMF" under either of the following methods (or some combination thereof): (a) as any fund of which its investors are *only* (i) natural persons and (ii) investment vehicles generally used by natural persons irrespective of net worth (*e.g.*, 401(k), 529 plans, certain types of trusts and fiduciary accounts);[32] or (b) any fund that permits intraday settlement is not a retail MMMF.[33] Certainly these are not the only workable methods of drawing the confines of the retail MMMF exemption. However, FSR believes they are the most effective means of addressing the concerns of individual investors in MMMFs, and would be in line with the broader purpose of the exemption itself.

5. *Modifications to the Redemption Limit Régime, if Adopted.*

Although we do not support defining a retail exemption by reference to a daily redemption limit, if such a definition were to be implemented, we ask that the Commission modify the structures to provide a higher, inflation-adjusted redemption threshold and an exemption for individual investors who provide advance notice to the MMMF of their intended redemption transactions.

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[32] Under this prong of the retail MMMF definition, institutional accounts maintained by the following parties would not be included in the retail investor definition: (a) banks and savings and loan associations; (b) insurance companies and registered investment companies; and (c) investment advisers registered with the Commission under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions). *See, e.g.*, FINRA Rule 4512(c) (defining "institutional account").

[33] Intraday settlement is generally a requirement imposed by institutional investors.

a. Higher Threshold, Adjusted for Inflation.

FSR believes that any threshold for daily redemptions must be higher than the proposed $1 million. A threshold at such a low figure would have a significant negative impact on many individual investors. Several of our members record redemptions from their retail MMMFs in excess of $1 million. One member has noted that approximately 30% of retail MMMF accounts exceed $1 million. Thus, a $1 million threshold would create substantial difficulties for a significant number of retail investors to exercise full control over their assets, such as when an investor seeks to close an account and transfer assets to another firm. It is our belief that the redemption threshold should be set at $5 million, which would ensure that retail investors retain full control over their assets. However, FSR believes that a threshold of at least $2 million is necessary in order for many retail investors to continue using MMMFs as a viable cash management tool.

A redemption threshold of either $5 million or $2 million would fulfill the Commission's stated purpose of selecting "a threshold that is low enough that institutions would self-select out of retail funds, but high enough that it would not impose unnecessary burdens on retail investors, even when they engage in atypical redemptions."[34] In our view, either of our recommended thresholds would be sufficient to provide a limitation on heightened redemptions in a time of stress, which would allow the retail fund adequate time to predict and manage its liquidity requirements. Additionally, retail investors, who historically have not been subject to redemption thresholds on MMMFs, may not account for this new restriction in their transaction planning, and a higher threshold would mitigate the potential disruption a redemption threshold may cause. Thus, increasing the threshold would greatly reduce the occurrence of transaction failures and their associated costs.

Finally, if the retail exemption is to serve its purpose and also provide certainty to individual investors who rely on this product to meet their cash management needs, the Commission should provide an adjustment based upon the consumer price (or similar) index so that the relative amounts are not diminished over time due to the effects of inflation.[35]

b. Exemptive Relief with Advance Notice.

If the Commission were to define the retail MMMF in a manner substantially similar to the Proposal, and even if, as we recommend, the redemption threshold were raised, FSR requests that the Commission provide an exemption from the redemption

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[34] Proposing Release at 36,859.

[35] Additionally, any other reference to dollar thresholds under the Proposal should be similarly indexed.

limit in instances where the redeeming investor provides advance notice of the intended redemption transaction.

As the Commission anticipates in the Proposal,[36] FSR believes that advance notice for redemptions greater than the threshold would be useful to individual investors who may at times have need for cash in sums greater than $1 million, such as for the purchase of a home. As another example, it is not uncommon for individuals to use MMMF accounts as a sweep vehicle for their securities brokerage accounts, which enables them to efficiently manage significant amounts of cash, such as rolling over retirement account proceeds. Typically, proceeds of a 401(k) or similar plan are "rolled-over" into the 401(k) owner's individual retirement account ("IRA"). The proceeds are then invested in MMMFs pending the ultimate determination of how to invest the funds. However, once the ultimate investment decision has been made, the imposition of a redemption limit (absent an exemption for redemptions with advance notice) could frustrate the ability of the IRA owner to re-invest those funds.

FSR believes that an express exemption from the redemption limit when advance notice is given would preserve the utility of MMMFs to individual investors. Thus, we urge the Commission to adopt an exemption to the redemption threshold when the redeeming investor provides advance notice.

6. *Operational Implications.*

The implementation of Alternative 1 would significantly impact the cost of administering MMMFs as well as the utility of such funds to many investors. The Center for Capital Markets Competitiveness (the "Center") notes that key stakeholders will need to expend significant resources to address the operational complexities, system alterations and business process changes necessary to accommodate the change to a floating NAV.[37]

The costs associated with implementing and administering a floating NAV fund are significant. The Center notes that additional operational costs associated with a floating NAV would vary based the number of funds being offered by a fund management company. For example, larger management companies would face implementation costs of between $10 and $15 million; smaller management companies would face implementation costs of between $4 and $7 million. The Center further notes that ongoing costs would nearly double as a result of increased price monitoring

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[36] Proposing Release at 36,860.

[37] Center for Capital Markets Competitiveness, *Operational Implications of a Floating NAV across Money Market Fund Industry Key Stakeholders* at 4 (Summer 2013).

responsibilities, with one fund estimating annual costs of between $10 and $12.5 million.[38]

Corporate investors, the largest users of MMMFs, would be required to review and modify their current policies and practices for investment process engineering, intraday liquidity management, accounting, tax reporting, system engineering and debt issuance.[39] The current process of purchasing shares in a stable-value MMMF involves little more than executing the order and recording it. Under Alternative 1, corporate investors would first evaluate NAV positions prior to initiation to ensure compliance with corporate investment policy, and then trade initiation and execution would necessarily involve complex processes for price confirmation.[40]

Numerous issues arise in the design needs for these new processes. From an operations perspective, firms' sweep account systems are programmed to process transactions in two decimal places, but under Alternative 1 will be required to display the NAV in four decimal places even though trading will have to be *rounded to two decimal places for purposes of trade execution and settlement*. These challenges would require extensive and expensive programming changes to systems. Similar confirmation burdens would arise upon redemption from MMMFs. For example, prior to redemption, a corporation would be required to confirm interest *and* settlement amount to ensure that the share price recorded by the fund matches that recorded by the corporation.[41]

These processes must further conform to all required accounting and tax reporting requirements, which will become especially complex if investments in floating NAV MMMFs are categorized as available-for-sale securities, which would require reporting on the balance sheet at fair value. These requirements would affect all end-investors, including municipalities, universities and other public sector entities. The Commission has offered little substantive guidance on its understanding of these operational implications for end-investors.

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[38] *Id.* at 42. We note that these estimates assume an implementation schedule of between 18 and 24 months.

[39] *Id.* at 9.

[40] *Id.* at 11.

[41] *Id.* at 12.

7. *Two-Year Transition Period.*

We support the Commission's determination to grant a transition period before Alternative 1 would become effective. As the Commission acknowledges, a transition period is necessary given the operational challenges that Alternative 1 would pose for fund sponsors, administrators and others.[42] However, we recommend that the Commission provide a transition period of 36 months, because many fund sponsors and service providers would struggle to implement and abide by the proposed two-year compliance requirement without causing significant stress on their administrative functions.

The transition period should not begin until the tax and accounting issues have been resolved—and the Commission, with the support of other regulators and standards-setters (the Treasury, the FASB, *etc*.), are able to provide certainty on tax, accounting and related issues. We further note that in the absence of certainty on tax and accounting treatment, funds may be subject to additional and unnecessary costs. Funds may be required to implement operations and compliance systems under the new rules, which would then require additional modification to accommodate the finalized tax and accounting treatment. Additionally, investors will completely avoid MMMFs if they are uncertain of the tax and accounting treatment required for such investments. For these reasons, FSR believes that any transition period should begin only after regulators and standards-setters have provided certainty on these issues.

B. Alternative 2: Stand-by Liquidity Fees and Gates.

The Proposal's second alternative would continue to allow MMMFs to transact at a stable share price, but would (1) require MMMFs to institute a default liquidity fee of 2 percent (2%) if the fund's weekly liquid assets were to fall below 15 percent (15%) of total assets (unless the fund's board of directors determined not imposing such a fee would be in the best interest of the fund); and (2) permit MMMFs to impose a gate after triggering the 15 percent (15%) weekly liquid asset threshold if the board determined it to be in the best interest of the fund.[43] The Proposal states that Alternative 2 was designed to address contagion effects, exposed during the financial crisis of 2007-2008, that result from heavy redemptions in MMMFs that may have a significant impact on investors, funds, and the markets.[44]

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42 *See* Proposing Release at 36,877.

43 *Id.* at 36,878.

44 *Id.*

FSR believes certain aspects of Alternative 2 must be modified and/or clarified. The issues include concerns about the degree of discretion exercised by fund boards of directors with regard to both the amount of any liquidity fee and the imposition of liquidity fees and gates, as well as operational concerns arising from Alternative 2. These operational issues include, but are not limited to, how a fund's operations systems would account for liquidity fees and how a fund can comply with tax reporting and determining tax basis in MMMF shares given the frequent purchases, reinvestment of interest earned and redemptions of shares. FSR seeks clarification on the implications of Alternative 2 on ERISA plan sponsors and ERISA fiduciaries. Finally, FSR recommends that the Commission provide a 36-month implementation period and exemptions for both retail and municipal MMMFs.

1. *Board of Director Discretion; the Default Approach.*

We believe the Proposal's default approaches should be substantially modified. The "default rule" should not be that fund boards of directors must impose a liquidity fee at the triggering of the weekly liquid asset threshold, absent an affirmative determination that doing so would not be in the best interest of the MMMF. Rather, the default rule should be "no-fee" and the fund's board should be required to exercise its business judgment, subject to its fiduciary duty to the fund, in deciding whether to impose a fee upon the occurrence of a triggering event.

FSR's primary concern is that directors would be hard-pressed to take any action other than the default—as currently drafted, imposing a liquidity fee—due to the potential for liability. By extension, fees would be imposed in situations in which they should not. By the same token, if fund boards of directors were given full optionality as to whether a liquidity fee should be imposed, directors would still be driven by their fiduciary duty to take actions in the best interest of the fund. Thus, even though fund boards of directors *need not* impose a fee as a default matter does not mean that fund boards of directors would not impose a fee as a result of their fiduciary duty to the fund. We posit that in almost all instances in which the weekly liquid asset threshold would be triggered, the fiduciary duty would mandate that the board of directors impose a liquidity fee.

FSR urges the Commission to revise Alternative 2 to provide that fund boards of directors may, subject to their business judgment, determine whether or not a fee should be imposed.

2. *Clarifying Revision Concerning the Board of Director's Discretion.*

If the "default rule" regarding fees were to be adopted as drafted in the Proposal, we submit that the Commission should redraft the liquidity fees and gates alternative to clarify that fund boards of directors have discretion to not impose liquidity fees. In the Proposal's current formulation, it is not clear that directors have such discretion.

By way of example, Form N-CR Item E.4 of Alternative 2 is drafted with clarity that a fund board has discretion as to the imposition (or non-imposition) of any fee; however, the rule itself is drafted without a focus on the board of director's discretion. Given that the discretionary language is at the tail end of the liquidity fees section, board of director discretion to not impose a fee does not appear to be a feasible alternative.[45] The drafting of the Proposal appears to strengthen the presumption that boards of directors would be hard-pressed to *not* impose a fee.

In order to emphasize that boards of directors have discretion to impose (or not impose) a liquidity fee, FSR recommends that the Commission place the discretionary language at the front of the liquidity fees section, thereby clarifying that fund boards of directors need not impose a fee.

3. *Two Percent Liquidity Fee.*

FSR submits that the two percent (2%) default liquidity fee proposed by the Commission is inappropriate and appears to be arbitrary. We believe that the liquidity fee, if one were to be adopted, should reflect the *actual* cost of liquidity to the fund. In determining the liquidity fee—rather than using an arbitrary figure—fund managers, administrators, and boards of directors should be required to come together to determine the appropriate amount to be imposed. A two percent (2%) fee may be too high in some circumstances, and too low in others. In giving discretion to fund boards of directors to determine the appropriate fee, the Commission can avoid the potential to over or underprice the cost of liquidity to a MMMF in times of financial stress.

We acknowledge that under the Proposal's current formulation, fund boards of directors are permitted to impose a lower liquidity fee if it is determined that such lower fee is in the best interest of the fund.[46] But, again, as discussed in Section II.B.2 of this letter, we do not believe that the discretion granted to fund boards of directors is given

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[45] *Id.* at 37,008.

[46] *Id.*

sufficient emphasis. And, in any event, it would be most appropriate for any liquidity fee to represent the actual cost of liquidity to the fund, rather than a pre-defined amount.

4. *Tax Implications.*

The tax implications analysis in the Proposal lacks sufficient detail to address significant industry concerns.[47] For example, if the fund's board of directors were to impose a liquidity fee and, as a result, a shareholder suffers a loss on its MMMF position, how would the fund report the loss for federal income tax purposes? FSR posits that the fund would be required to capture *all transactions* by the shareholder in order to calculate accurately the shareholder's basis in the MMMF with respect to the shareholder's sale of shares in the fund. We submit that, as with Alternative 1, if Alternative 2 were to be adopted, the tax implications must be resolved before any transition to a final rule. And, after the tax implications have been resolved, investors, and those with interests in, the MMMF industry should be given an additional opportunity to comment on the rule after certainty has been provided on the tax issues.

5. *Operational Implications of Liquidity Fees*.

The Proposal fails to take into account the substantial changes to broker-dealers' operations departments necessitated by liquidity fees. The scope of these changes touches the entirety of a firm's trade and trade-related systems because investors often utilize MMMFs through automated sweep accounts, which require the integration of many different operational systems. The possibility of imposing a liquidity fee would require each firm to modify its trade and trade-related systems' logic such that an additional step is taken for each transaction to ensure that the investor has sufficient funds to cover the trade itself plus the possibility of a liquidity fee. This is a necessity due to the fact that investors would not necessarily exit their MMMF positions at a dollar-for-dollar rate. Without the additional step, the investor would need to tender additional funds to the broker-dealer if it were later determined that the investor had insufficient funds to settle the trade as a result of a liquidity fee. FSR requests that the Commission provide at least a 36-month transition period to allow firms sufficient time to design, build, test, and implement these significant changes to their trade and trade-related systems.

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[47] *Id.* at 36,893.

6. *Implications on ERISA Plan Sponsors.*

Redemption gates would result in significant issues for ERISA plan sponsors stemming from their fiduciary duties owed to plan participants and beneficiaries. Redemption gates may render MMMFs unsuitable for ERISA plans if fiduciaries cannot redeem shares after a gate has been imposed. Thus, if the Commission were to adopt Alternative 2, FSR recommends that the Commission provide an exception permitting ERISA plan sponsors to redeem shares despite the activation of a redemption gate.

7. *Retail and Municipal Fund Exemptions.*

The Commission should provide exemptions for both retail MMMFs and Municipal Funds. For the same reasons noted with respect to Alternative 1, Municipal Funds should be specifically exempted from Alternative 2. Moreover, it appears that the Commission declined to provide a retail MMMF exemption in Alternative 2 based on the conclusions of a cost-benefit analysis showing that there would be little harm in grouping retail MMMFs with institutional prime MMMFs because stand-by liquidity fees and gates would not be triggered often against retail MMMFs.[48] Although it seems reasonable to believe that triggering events would be rare, we do not believe that the Commission's position is warranted. FSR believes it would be more in accord with the Commission's goals and the results of the Staff Study to apply further restrictions solely on institutional prime MMMFs.[49] Thus, FSR urges the Commission to adopt a similar exemption for retail MMMFs here as with Alternative 1.

C. Combination of Floating NAV and Liquidity Fees and Gates.

The Proposal also suggests that the Commission would consider implementing some combination of Alternative 1 and Alternative 2. The Proposal states that such an approach would address some of the drawbacks of each of the other alternatives, but would also present other tradeoffs in and of itself.[50]

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[48] *See id.* at 36,891.

[49] Chair White Statement at the Commission Open Meeting, June 5, 2013, *available at* http://www.sec.gov/divisions/investment/im-moneymarket-statements.shtml (stating that the Proposal seeks to address "the stable value pricing of institutional prime funds—at the heart of the 2008 run—and propos[e] methods to stop a [MMMF] run before such a run becomes a systemically destabilizing event").

[50] Proposing Release at 36,901.

Although several FSR members are not necessarily opposed to a potential combination of Alternative 1 and Alternative 2, the Commission has failed to provide meaningful guidance on the terms of any such combination. Each proposed alternative is, on its own accord, laden with various administrative and financial hurdles. Any combination of the two may result in excessive and possibly insurmountable burdens on investors and the industry. We additionally note that granting funds the option to choose between Alternative 1 and Alternative 2 would result in confusion for both customers and the industry. To be certain, FSR members not necessarily opposed to a combination are proceeding on the assumption that the Commission would take into account the terms of this comment letter in crafting the provisions of the proposed combination.

Without greater clarity on the composition of a rule that would combine some elements of both alternatives, FSR is unable to offer substantive comments. If the Commission determines that the optimum approach would be to combine the alternatives, we believe the Commission should provide the public and the affected industry an opportunity to comment on the specific provisions of any proposed combination.

III. Other Proposed Reforms

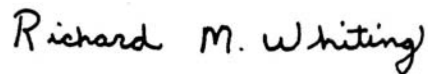
A. Disclosure Requirements.

We further note that the Proposal's various disclosure requirements are burdensome and duplicative. The Proposal would require various actions on behalf of funds that would add little value to investors and would come at a significant cost to the fund and ultimately to the fund's investors. If the Commission were to adopt these disclosure requirements, FSR urges the Commission to harmonize the new disclosure requirements so that funds would face lower administrative burdens, and investors would bear correspondingly fewer costs.

* * *

FSR appreciates the opportunity to submit comments on the Commission's proposed reforms to money market mutual funds. If it would be helpful to discuss FSR's specific comments or general views on this issue, please contact me at Rich@fsround.org or Rich Foster at Richard.Foster@fsround.org.

Sincerely yours,



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With a copy to:
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The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael Piwowar, Commissioner

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